

AMENDED IN SENATE AUGUST 6, 1996

AMENDED IN SENATE JULY 2, 1996

AMENDED IN ASSEMBLY MAY 6, 1996

AMENDED IN ASSEMBLY APRIL 23, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

## ASSEMBLY BILL

**No. 2949**

**Introduced by Assembly Member Harvey**

February 23, 1996

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An act to amend ~~Sections 44010 and 87010 of the Education Code, to amend Section 51032 of the Government Code, to amend Sections 266a, 266e, 647, 647f, 647.1, 653.22, 784, 1001.10, and 1202.6 of the Penal Code, and to amend Section 22659.5 of Section 647 of the Penal Code, and to add Section 13201.5 to, and to amend and repeal Section 22659.5 of, the Vehicle Code, relating to prostitution.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2949, as amended, Harvey. Prostitution.

(1) Existing law makes it a misdemeanor to solicit or agree to engage in or to engage in any act of prostitution, which includes any lewd act between persons for money or other consideration. Existing law provides that no agreement to engage in prostitution shall violate this provision unless the person does some act in furtherance of the agreement.

This bill would enact the Prostitution Abatement and Neighborhood Protection Act of 1996.

~~This bill would provide that a person first convicted of prostitution within 1,000 feet of a private residence shall be punished by imprisonment in a county jail for a period of not less than 30 days. The bill would provide for an enhanced punishment for a subsequent violation committed within 1,000 feet of a private residence. The bill would authorize the judge to suspend the person's driving privilege of a person convicted of prostitution, for not to exceed 30 days, for any violation committed within 1,000 feet of a private residence and with the use of a vehicle, in addition to this other punishment.~~

By increasing the ~~penalties~~ *penalty* for an existing ~~crimes~~ *crime*, the bill would impose a state-mandated local program.

(2) Existing law authorizes, until January 1, 1999, specified cities, counties, and portions of cities to adopt an ordinance establishing a pilot program implementing procedures for declaring any motor vehicle a public nuisance when used in the commission of an act of prostitution, and there is a conviction of the underlying offense, except in specified circumstances. Existing law authorizes the ordinance to include procedures, as prescribed, to enjoin and abate the declared nuisance.

This bill would add the County of Kern and any city in that county to the list of cities and counties authorized to adopt this ordinance.

The bill would also make conforming changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited  
2 as the "Prostitution Abatement and Neighborhood  
3 Protection Act of 1996."

1 ~~SEC. 2. Section 44010 of the Education Code is~~  
2 ~~amended to read:~~

3 ~~44010. “Sex offense,” as used in Sections 44346, 44425,~~  
4 ~~44436, 44836, 45123, and 45304, means any one or more of~~  
5 ~~the offenses listed below:~~

6 ~~(a) Any offense defined in Section 261.5, 264.1, 266,~~  
7 ~~267, 285, 286, 288, 288a, 289, 311.3, 311.4, 313.1, 647.6, or~~  
8 ~~former Section 647a, subdivision (a), (b), or (c) of Section~~  
9 ~~243.4, paragraph (1), (2), (3), or (4) of subdivision (a) of~~  
10 ~~Section 261, subdivision (b) of Section 311.2, or paragraph~~  
11 ~~(1) or (4) of subdivision (a) of Section 647 of the Penal~~  
12 ~~Code.~~

13 ~~(b) Any offense defined in former subdivision 5 of~~  
14 ~~former Section 647 of the Penal Code repealed by~~  
15 ~~Chapter 560 of the Statutes of 1961, or any offense defined~~  
16 ~~in former subdivision 2 of former Section 311 of the Penal~~  
17 ~~Code repealed by Chapter 2147 of the Statutes of 1961, if~~  
18 ~~the offense defined in those sections was committed prior~~  
19 ~~to September 15, 1961, to the same extent that an offense~~  
20 ~~committed prior to that date was a sex offense for the~~  
21 ~~purposes of this section prior to September 15, 1961.~~

22 ~~(c) Any offense defined in Section 314 of the Penal~~  
23 ~~Code committed on or after September 15, 1961.~~

24 ~~(d) Any offense defined in former subdivision 1 of~~  
25 ~~former Section 311 of the Penal Code repealed by~~  
26 ~~Chapter 2147 of the Statutes of 1961 committed on or after~~  
27 ~~September 7, 1955, and prior to September 15, 1961.~~

28 ~~(e) Any offense involving lewd and lascivious conduct~~  
29 ~~under Section 272 of the Penal Code committed on or~~  
30 ~~after September 15, 1961.~~

31 ~~(f) Any offense involving lewd and lascivious conduct~~  
32 ~~under former Section 702 of the Welfare and Institutions~~  
33 ~~Code repealed by Chapter 1616 of the Statutes of 1961, if~~  
34 ~~that offense was committed prior to September 15, 1961,~~  
35 ~~to the same extent that an offense committed prior to that~~  
36 ~~date was a sex offense for the purposes of this section prior~~  
37 ~~to September 15, 1961.~~

38 ~~(g) Any offense defined in Section 286 or 288a of the~~  
39 ~~Penal Code prior to the effective date of the amendment~~  
40 ~~of either section enacted at the 1975-76 Regular Session~~

~~1 of the Legislature committed prior to the effective date  
2 of the amendment.~~

~~3 (h) Any attempt to commit any of the  
4 above mentioned offenses.~~

~~5 (i) Any offense committed or attempted in any other  
6 state which, if committed or attempted in this state,  
7 would have been punishable as one or more of the  
8 above mentioned offenses.~~

~~9 (j) Any conviction for an offense resulting in the  
10 requirement to register as a sex offender pursuant to  
11 Section 290 of the Penal Code.~~

~~12 SEC. 3. Section 87010 of the Education Code is  
13 amended to read:~~

~~14 87010. "Sex offense," as used in Sections 87405, 88022,  
15 and 88123, means any one or more of the offenses listed  
16 below:~~

~~17 (a) Any offense defined in Section 261.5, 266, 267, 285,  
18 286, 288, 288a, 647.6, or former Section 647a, subdivision  
19 2 or 3 of Section 261, or paragraph (1) or (4) of subdivision  
20 (a) of Section 647 of the Penal Code.~~

~~21 (b) Any offense defined in former subdivision 5 of  
22 former Section 647 of the Penal Code repealed by  
23 Chapter 560 of the Statutes of 1961, or any offense defined  
24 in former subdivision 2 of former Section 311 of the Penal  
25 Code repealed by Chapter 2147 of the Statutes of 1961, if  
26 the offense defined in those sections was committed prior  
27 to September 15, 1961, to the same extent that such an  
28 offense committed prior to that date was a sex offense for  
29 the purposes of this section prior to September 15, 1961.~~

~~30 (c) Any offense defined in Section 314 of the Penal  
31 Code committed on or after September 15, 1961.~~

~~32 (d) Any offense defined in former subdivision 1 of  
33 former Section 311 of the Penal Code repealed by  
34 Chapter 2147 of the Statutes of 1961 committed on or after  
35 September 7, 1955, and prior to September 15, 1961.~~

~~36 (e) Any offense involving lewd and lascivious conduct  
37 under Section 272 of the Penal Code committed on or  
38 after September 15, 1961.~~

~~39 (f) Any offense involving lewd and lascivious conduct  
40 under former Section 702 of the Welfare and Institutions~~

1 ~~Code repealed by Chapter 1616 of the Statutes of 1961, if~~  
2 ~~the offense was committed prior to September 15, 1961,~~  
3 ~~to the same extent that such an offense committed prior~~  
4 ~~to that date was a sex offense for the purposes of this~~  
5 ~~section prior to September 15, 1961.~~

6 ~~(g) Any offense defined in Section 286 or 288a of the~~  
7 ~~Penal Code prior to the effective date of the amendment~~  
8 ~~of either section enacted at the 1975-76 Regular Session~~  
9 ~~of the Legislature committed prior to the effective date~~  
10 ~~of the amendment.~~

11 ~~(h) Any attempt to commit any of the~~  
12 ~~above-mentioned offenses.~~

13 ~~(i) Any offense committed or attempted in any other~~  
14 ~~state which, if committed or attempted in this state,~~  
15 ~~would have been punishable as one or more of the~~  
16 ~~above-mentioned offenses.~~

17 ~~SEC. 4. Section 51032 of the Government Code is~~  
18 ~~amended to read:~~

19 ~~51032. The ordinance may also provide that a license~~  
20 ~~to engage in the business of massage may be denied upon~~  
21 ~~a showing by the licensing authority of any of the~~  
22 ~~following:~~

23 ~~(a) Proof that the massage personnel and the owners~~  
24 ~~or operators of a massage business have been convicted~~  
25 ~~of a violation of Section 266i, 315, 316, 318, or paragraph~~  
26 ~~(2) of subdivision (a) of Section 647 of the Penal Code,~~  
27 ~~proof that the massage personnel or the owners or~~  
28 ~~operators of a massage business have been convicted in~~  
29 ~~any other state of any offense which, if committed or~~  
30 ~~attempted in this state, would have been punishable as~~  
31 ~~one or more of the above-mentioned offenses of this~~  
32 ~~subdivision, or proof that the massage personnel or the~~  
33 ~~owners or operators of a massage business are required to~~  
34 ~~register under the provisions of Section 290 of the Penal~~  
35 ~~Code.~~

36 ~~(b) Proof that the massage personnel and the owners~~  
37 ~~or operators of a massage business have been convicted~~  
38 ~~of any felony offense involving the sale of a controlled~~  
39 ~~substance specified in Section 11054, 11055, 11056, 11057,~~  
40 ~~or 11058 of the Health and Safety Code or proof that the~~

~~1 massage personnel or the owners or operators of the  
2 massage business have been convicted in any other state  
3 of any offense which, if committed or attempted in this  
4 state, would have been punishable as one or more of the  
5 above-mentioned offenses of this subdivision.~~

~~6 SEC. 5. Section 266a of the Penal Code is amended to  
7 read:~~

~~8 266a. Every person who, within this state, takes any  
9 person against his or her will and without his or her  
10 consent, or with his or her consent procured by  
11 fraudulent inducement or misrepresentation, for the  
12 purpose of prostitution, as defined in paragraph (2) of  
13 subdivision (a) of Section 647, shall be punished by  
14 imprisonment in the state prison, and a fine not  
15 exceeding two thousand dollars (\$2,000).~~

~~16 SEC. 6. Section 266e of the Penal Code is amended to  
17 read:~~

~~18 266e. Every person who purchases, or pays any  
19 money or other valuable thing for, any person for the  
20 purpose of prostitution as defined in paragraph (2) of  
21 subdivision (a) of Section 647, or for the purpose of  
22 placing that person, for immoral purposes, in any house  
23 or place against his or her will, is guilty of a felony.~~

~~24 SEC. 7. Section 647 of the Penal Code is amended to  
25 read:~~

~~26 647. (a) Every person who commits any of the  
27 following acts is guilty of disorderly conduct, a  
28 misdemeanor:~~

~~29 (1) Who solicits anyone to engage in or who engages  
30 in lewd or dissolute conduct in any public place or in any  
31 place open to the public or exposed to public view.~~

~~32 (2) Who solicits or who agrees to engage in or who  
33 engages in any act of prostitution. A person agrees to  
34 engage in an act of prostitution when, with specific intent  
35 to engage, he or she manifests an acceptance of an offer  
36 or solicitation to engage, regardless of whether the offer  
37 or solicitation was made by a person who also possessed  
38 the specific intent to engage in prostitution. No  
39 agreement to engage in an act of prostitution shall  
40 constitute a violation of this subdivision unless some act,~~

1 in addition to the agreement, is done within this state in  
2 furtherance of the commission of an act of prostitution by  
3 the person agreeing to engage in that act. As used in this  
4 subdivision, "prostitution" includes any lewd act  
5 between persons for money or other consideration.

6 (3) Who accosts other persons in any public place or in  
7 any place open to the public for the purpose of begging  
8 or soliciting alms.

9 (4) Who loiters in or about any toilet open to the public  
10 for the purpose of engaging in or soliciting any lewd or  
11 lascivious or any unlawful act.

12 (5) Who loiters or wanders upon the streets or from  
13 place to place without apparent reason or business and  
14 who refuses to identify himself or herself and to account  
15 for his or her presence when requested by any peace  
16 officer so to do, if the surrounding circumstances would  
17 indicate to a reasonable person that the public safety  
18 demands this identification.

19 (6) Who is found in any public place under the  
20 influence of intoxicating liquor, any drug, controlled  
21 substance, toluene, or any combination of any  
22 intoxicating liquor, drug, controlled substance, or  
23 toluene, in such a condition that he or she is unable to  
24 exercise care for his or her own safety or the safety of  
25 others, or by reason of his or her being under the  
26 influence of intoxicating liquor, any drug, controlled  
27 substance, toluene, or any combination of any  
28 intoxicating liquor, drug, or toluene, interferes with or  
29 obstructs or prevents the free use of any street, sidewalk,  
30 or other public way.

31 (7) When a person has violated paragraph (6), a peace  
32 officer, if he or she is reasonably able to do so, shall place  
33 the person, or cause him or her to be placed, in civil  
34 protective custody. The person shall be taken to a facility,  
35 designated pursuant to Section 5170 of the Welfare and  
36 Institutions Code, for the 72-hour treatment and  
37 evaluation of inebriates. A peace officer may place a  
38 person in civil protective custody with that kind and  
39 degree of force which would be lawful were he or she  
40 effecting an arrest for a misdemeanor without a warrant.

~~1 No person who has been placed in civil protective custody  
2 shall thereafter be subject to any criminal prosecution or  
3 juvenile court proceeding based on the facts giving rise  
4 to this placement. This subdivision shall not apply to the  
5 following persons:~~

~~6 (A) Any person who is under the influence of any  
7 drug, or under the combined influence of intoxicating  
8 liquor and any drug.~~

~~9 (B) Any person who a peace officer has probable cause  
10 to believe has committed any felony, or who has  
11 committed any misdemeanor in addition to paragraph  
12 (6).~~

~~13 (C) Any person who a peace officer in good faith  
14 believes will attempt escape or will be unreasonably  
15 difficult for medical personnel to control.~~

~~16 (8) Who loiters, prowls, or wanders upon the private  
17 property of another, at any time, without visible or lawful  
18 business with the owner or occupant. As used in this  
19 paragraph, "loiter" means to delay or linger without a  
20 lawful purpose for being on the property and for the  
21 purpose of committing a crime as opportunity may be  
22 discovered.~~

~~23 (9) Who, while loitering, prowling, or wandering upon  
24 the private property of another, at any time, peeks in the  
25 door or window of any inhabited building or structure,  
26 without visible or lawful business with the owner or  
27 occupant.~~

~~28 (10) Who lodges in any building, structure, vehicle, or  
29 place, whether public or private, without the permission  
30 of the owner or person entitled to the possession or in  
31 control of it.~~

~~32 (11) Anyone who looks through a hole into a bathroom  
33 with the intent to invade the privacy of persons inside.~~

~~34 (b) (1) In any accusatory pleading charging a  
35 violation of paragraph (2) of subdivision (a), if the  
36 defendant has been once previously convicted of a  
37 violation of that subdivision, the previous conviction shall  
38 be charged in the accusatory pleading. If the previous  
39 conviction is found to be true by the jury, upon a jury trial,  
40 or by the court, upon a court trial, or is admitted by the~~



1 ~~defendant, the defendant shall be imprisoned in a county~~  
2 ~~jail for a period of not less than 45 days and shall not be~~  
3 ~~eligible for release upon completion of sentence, on~~  
4 ~~probation, on parole, on work furlough or work release,~~  
5 ~~or on any other basis until he or she has served a period~~  
6 ~~of not less than 45 days in a county jail. In all cases in which~~  
7 ~~probation is granted, the court shall require as a condition~~  
8 ~~thereof that the person be confined in the county jail for~~  
9 ~~at least 45 days. In no event does the court have the power~~  
10 ~~to absolve a person who violates paragraph (2) of~~  
11 ~~subdivision (a) from the obligation of spending at least 45~~  
12 ~~days in confinement in a county jail.~~

13 ~~(2) In any accusatory pleading charging a violation of~~  
14 ~~paragraph (2) of subdivision (a), if the defendant has~~  
15 ~~been previously convicted two or more times of a~~  
16 ~~violation of that subdivision, each such previous~~  
17 ~~conviction shall be charged in the accusatory pleading. If~~  
18 ~~two or more of these previous convictions are found to be~~  
19 ~~true by the jury, upon a jury trial, or by the court, upon~~  
20 ~~a court trial, or are admitted by the defendant, the~~  
21 ~~defendant shall be imprisoned in a county jail for a period~~  
22 ~~of not less than 90 days and shall not be eligible for release~~  
23 ~~upon completion of sentence, on probation, on parole, on~~  
24 ~~work furlough or work release, or on any other basis until~~  
25 ~~he or she has served a period of not less than 90 days in a~~  
26 ~~county jail. In all cases in which probation is granted, the~~  
27 ~~court shall require as a condition thereof that the person~~  
28 ~~be confined in a county jail for at least 90 days. In no event~~  
29 ~~does the court have the power to absolve a person who~~  
30 ~~violates paragraph (2) of subdivision (a) from the~~  
31 ~~obligation of spending at least 90 days in confinement in~~  
32 ~~the county jail.~~

33 ~~(3) Upon a first violation of paragraph (2) of~~  
34 ~~subdivision (a) that occurred within 1,000 feet of a private~~  
35 ~~residence, the defendant shall be punished by~~  
36 ~~imprisonment in a county jail for not less than 30 days.~~  
37 ~~Upon a subsequent violation of paragraph (2) of~~  
38 ~~subdivision (a) that was committed within 1,000 feet of a~~  
39 ~~private residence, the defendant shall be punished by~~

~~imprisonment in a county jail for 30 days in addition to the punishment prescribed by paragraph (1) or (2).~~

~~(4) In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of paragraph (2) of subdivision (a) that was committed within 1,000 feet of a private residence and with the use of a vehicle.~~

~~SEC. 8. Section 647f of the Penal Code is amended to read:~~

~~647f. In any accusatory pleading charging a violation of paragraph (2) of subdivision (a) of Section 647, if the defendant has been previously convicted one or more times of a violation of that paragraph or of any other offense listed in subdivision (d) of Section 1202.1, and in connection with one or more of those convictions a blood test was administered pursuant to Section 1202.1 or 1202.6 with positive test results, of which the defendant was informed, the previous conviction and positive blood test results, of which the defendant was informed, shall be charged in the accusatory pleading. If the previous conviction and informed test results are found to be true by the trier of fact or are admitted by the defendant, the defendant is guilty of a felony.~~

~~SEC. 9. Section 647.1 of the Penal Code is amended to read:~~

~~647.1. (a) In addition to any fine assessed under Section 647, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates paragraph (1) or (2) of subdivision (a) of Section 647, or, if the offense involves intravenous use of a controlled substance, paragraph (6) of subdivision (a) of Section 647, with the proceeds of this fine to be used in accordance with Section 1463.23.~~

~~(b) The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.~~

1 ~~SEC. 10. Section 653.22 of the Penal Code is amended~~  
2 ~~to read:~~

3 ~~653.22. (a) It is unlawful for any person to loiter in~~  
4 ~~any public place with the intent to commit prostitution.~~  
5 ~~This intent is evidenced by acting in a manner and under~~  
6 ~~circumstances which openly demonstrate the purpose of~~  
7 ~~inducing, enticing, or soliciting prostitution, or procuring~~  
8 ~~another to commit prostitution.~~

9 ~~(b) Among the circumstances that may be considered~~  
10 ~~in determining whether a person loiters with the intent~~  
11 ~~to commit prostitution are that the person:~~

12 ~~(1) Repeatedly beckons to, stops, engages in~~  
13 ~~conversations with, or attempts to stop or engage in~~  
14 ~~conversations with passersby, indicative of soliciting for~~  
15 ~~prostitution.~~

16 ~~(2) Repeatedly stops or attempts to stop motor~~  
17 ~~vehicles by hailing the drivers, waving arms, or making~~  
18 ~~any other bodily gestures, or engages or attempts to~~  
19 ~~engage the drivers or passengers of the motor vehicles in~~  
20 ~~conversation, indicative of soliciting for prostitution.~~

21 ~~(3) Has been convicted of violating this section;~~  
22 ~~paragraph (1) or (2) of subdivision (a) of Section 647, or~~  
23 ~~any other offense relating to or involving prostitution;~~  
24 ~~within five years of the arrest under this section.~~

25 ~~(4) Circles an area in a motor vehicle and repeatedly~~  
26 ~~beckons to, contacts, or attempts to contact or stop~~  
27 ~~pedestrians or other motorists, indicative of soliciting for~~  
28 ~~prostitution.~~

29 ~~(5) Has engaged, within six months prior to the arrest~~  
30 ~~under this section, in any behavior described in this~~  
31 ~~subdivision, with the exception of paragraph (3), or in~~  
32 ~~any other behavior indicative of prostitution activity.~~

33 ~~(c) The list of circumstances set forth in subdivision~~  
34 ~~(b) is not exclusive. The circumstances set forth in~~  
35 ~~subdivision (b) should be considered particularly salient~~  
36 ~~if they occur in an area that is known for prostitution~~  
37 ~~activity. Any other relevant circumstances may be~~  
38 ~~considered in determining whether a person has the~~  
39 ~~requisite intent. Moreover, no one circumstance or~~  
40 ~~combination of circumstances is in itself determinative of~~

~~1 intent. Intent must be determined based on an evaluation  
2 of the particular circumstances of each case.~~

~~3 SEC. 11. Section 784 of the Penal Code is amended to  
4 read:~~

~~5 784. The jurisdiction of a criminal action:~~

~~6 (a) For forcibly and without lawful authority seizing  
7 and confining another, or inveigling or kidnapping  
8 another, with intent, against his or her will, to cause him  
9 or her to be secretly confined or imprisoned in this state,  
10 or to be sent out of the state, or from one county to  
11 another, or to be sold as a slave, or in any way held to  
12 service;~~

~~13 (b) For inveigling, enticing, or taking away any person  
14 for the purpose of concubinage or prostitution, as defined  
15 in paragraph (2) of subdivision (a) of Section 647;~~

~~16 Is in any competent court within the jurisdictional  
17 territory in which the offense was committed, or in the  
18 jurisdictional territory out of which the person upon  
19 whom the offense was committed was taken or within the  
20 jurisdictional territory in which an act was done by the  
21 defendant in instigating, procuring, promoting, or aiding  
22 in the commission of the offense, or in abetting the parties  
23 concerned therein.~~

~~24 SEC. 12. Section 1001.10 of the Penal Code is  
25 amended to read:~~

~~26 1001.10. (a) The judge shall require any person  
27 described in subdivision (b), as a condition of either  
28 placing the person on probation or of permitting the  
29 person to participate in a drug diversion program to  
30 agree to participate in an AIDS education program.  
31 Testing for AIDS antibodies shall be offered but no person  
32 described in subdivision (b) shall be required to be  
33 tested.~~

~~34 (b) This section shall apply to any person who has  
35 either been placed on probation or granted diversion for,  
36 any of the following:~~

~~37 (1) A violation of subdivision (a) of Section 11350 of  
38 the Health and Safety Code, subdivision (a) of Section  
39 11377 of the Health and Safety Code, Section 11550 of the  
40 Health and Safety Code, Section 4143 or 4149 of the~~

~~Business and Professions Code, or of subdivision (f) of Section 647 if the offense involves intravenous use of a controlled substance.~~

~~(2) A violation of paragraph (1) or (2) of subdivision (a) of Section 647.~~

~~SEC. 13. Section 1202.6 of the Penal Code is amended to read:~~

~~1202.6. (a) Notwithstanding Sections 199.20, 199.21, and 199.22 of the Health and Safety Code, upon the first conviction of any person for a violation of paragraph (2) of subdivision (a) of Section 647, the court shall, before sentencing or as a condition of probation, order the defendant to complete instruction in the causes and consequences of acquired immune deficiency syndrome (AIDS) pursuant to subdivision (d) and shall order the defendant to submit to testing for AIDS in accordance with subdivision (e). In addition, the court shall refer a defendant, where appropriate, to a program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to any drug diversion program, or both.~~

~~(b) Upon a second or subsequent conviction of a violation of paragraph (2) of subdivision (a) of Section 647, the court shall, before sentencing, order the defendant to submit to testing for AIDS in accordance with subdivision (e).~~

~~(c) At the sentencing hearing of a defendant ordered to submit to testing for AIDS pursuant to subdivision (a) or (b), the court shall furnish the defendant with a copy of the report submitted pursuant to subdivision (e) and shall direct the clerk to note the receipt of the report by the defendant in the records of the case.~~

~~If the results of the test described in the report are positive, the court shall make certain that the defendant understands the nature and meaning of the contents of the report and shall further advise the defendant of the penalty established in Section 647f for a subsequent violation of paragraph (2) of subdivision (a) of Section 647.~~

~~(d) The county health officer in each county shall select an agency, or agencies, in the county that shall provide AIDS prevention education. The county health officer shall endeavor to select an agency, or agencies, that currently provide AIDS prevention education programs to substance abusers or prostitutes. If no agency is currently providing this education, the county agency responsible for substance abuse shall develop an AIDS prevention education program either within the agency or under contract with a community-based, nonprofit organization in the county. The county health officer shall forward to the courts a list of agencies selected for purposes of referral.~~

~~An AIDS prevention education program providing services, at a minimum, shall include details about the transmission of human immunodeficiency virus (HIV); the etiologic agent for AIDS, symptoms of AIDS or AIDS-related conditions, prevention through avoidance or cleaning of needles, sexual practices which constitute high risk, low risk, and no risk (including abstinence), and resources for assistance if the person decides to take a test for the etiologic agent for AIDS and receives a positive test result. The program also shall include other relevant medical and prevention information as it becomes available.~~

~~(e) The court shall order testing of every defendant as ordered pursuant to subdivision (a) or (b) for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome. Notwithstanding Section 199.21 of the Health and Safety Code, written copies of the report on the test shall be furnished to both of the following:~~

~~(1) The court in which the defendant is to be sentenced;~~

~~(2) The State Department of Health Services.~~

~~(f) Except as provided in subdivisions (e) and (g), the reports required by subdivision (e) shall be confidential.~~

~~(g) The State Department of Health Services shall maintain the confidentiality of the reports received pursuant to subdivision (e), except that the department~~

1 ~~shall furnish copies of any such report to a district~~  
2 ~~attorney upon request.~~

3 ~~SEC. 14.~~

4 *SEC. 2. Section 647 of the Penal Code is amended to*  
5 *read:*

6 647. Every person who commits any of the following  
7 acts is guilty of disorderly conduct, a misdemeanor:

8 (a) Who solicits anyone to engage in or who engages  
9 in lewd or dissolute conduct in any public place or in any  
10 place open to the public or exposed to public view.

11 (b) Who solicits or who agrees to engage in or who  
12 engages in any act of prostitution. A person agrees to  
13 engage in an act of prostitution when, with specific intent  
14 to so engage, he or she manifests an acceptance of an offer  
15 or solicitation to so engage, regardless of whether the  
16 offer or solicitation was made by a person who also  
17 possessed the specific intent to engage in prostitution. No  
18 agreement to engage in an act of prostitution shall  
19 constitute a violation of this subdivision unless some act,  
20 in addition to the agreement, is done within this state in  
21 furtherance of the commission of an act of prostitution by  
22 the person agreeing to engage in that act. As used in this  
23 subdivision, "prostitution" includes any lewd act  
24 between persons for money or other consideration.

25 (c) Who accosts other persons in any public place or in  
26 any place open to the public for the purpose of begging  
27 or soliciting alms.

28 (d) Who loiters in or about any toilet open to the  
29 public for the purpose of engaging in or soliciting any  
30 lewd or lascivious or any unlawful act.

31 (e) Who loiters or wanders upon the streets or from  
32 place to place without apparent reason or business and  
33 who refuses to identify himself or herself and to account  
34 for his or her presence when requested by any peace  
35 officer so to do, if the surrounding circumstances ~~are such~~  
36 ~~as to~~ *would* indicate to a reasonable person that the public  
37 safety demands this identification.

38 (f) Who is found in any public place under the  
39 influence of intoxicating liquor, any drug, controlled  
40 substance, toluene, or any combination of any

1 intoxicating liquor, drug, controlled substance, or  
2 toluene, in such a condition that he or she is unable to  
3 exercise care for his or her own safety or the safety of  
4 others, or by reason of his or her being under the  
5 influence of intoxicating liquor, any drug, controlled  
6 substance, toluene, or any combination of any  
7 intoxicating liquor, drug, or toluene, interferes with or  
8 obstructs or prevents the free use of any street, sidewalk,  
9 or other public way.

10 (g) When a person has violated subdivision (f) of this  
11 section, a peace officer, if he or she is reasonably able to  
12 do so, shall place the person, or cause him or her to be  
13 placed, in civil protective custody. The person shall be  
14 taken to a facility, designated pursuant to Section 5170 of  
15 the Welfare and Institutions Code, for the 72-hour  
16 treatment and evaluation of inebriates. A peace officer  
17 may place a person in civil protective custody with that  
18 kind and degree of force which would be lawful were he  
19 or she effecting an arrest for a misdemeanor without a  
20 warrant. No person who has been placed in civil  
21 protective custody shall thereafter be subject to any  
22 criminal prosecution or juvenile court proceeding based  
23 on the facts giving rise to this placement. This subdivision  
24 shall not apply to the following persons:

25 (1) Any person who is under the influence of any drug,  
26 or under the combined influence of intoxicating liquor  
27 and any drug.

28 (2) Any person who a peace officer has probable cause  
29 to believe has committed any felony, or who has  
30 committed any misdemeanor in addition to subdivision  
31 (f) of this section.

32 (3) Any person who a peace officer in good faith  
33 believes will attempt escape or will be unreasonably  
34 difficult for medical personnel to control.

35 (h) Who loiters, prowls, or wanders upon the private  
36 property of another, at any time, without visible or lawful  
37 business with the owner or occupant ~~thereof~~. As used in  
38 this subdivision, “loiter” means to delay or linger without  
39 a lawful purpose for being on the property and for the



1 purpose of committing a crime as opportunity may be  
2 discovered.

3 (i) Who, while loitering, prowling, or wandering upon  
4 the private property of another, at any time, peeks in the  
5 door or window of any inhabited building or structure  
6 ~~located thereon~~, without visible or lawful business with  
7 the owner or occupant ~~thereof~~.

8 (j) Who lodges in any building, structure, vehicle, or  
9 place, whether public or private, without the permission  
10 of the owner or person entitled to the possession or in  
11 control ~~thereof~~ *of it*.

12 (k) Anyone who looks through a hole into a bathroom  
13 with the intent to invade the privacy of persons ~~therein~~  
14 *inside*.

15 In any accusatory pleading charging a violation of  
16 subdivision (b), if the defendant has been once  
17 previously convicted of a violation of that subdivision, the  
18 previous conviction shall be charged in the accusatory  
19 pleading. If the previous conviction is found to be true by  
20 the jury, upon a jury trial, or by the court, upon a court  
21 trial, or is admitted by the defendant, the defendant shall  
22 be imprisoned in ~~the a~~ county jail for a period of not less  
23 than 45 days and shall not be eligible for release upon  
24 completion of sentence, on probation, on parole, on work  
25 furlough or work release, or on any other basis until he or  
26 she has served a period of not less than 45 days in ~~the a~~  
27 county jail. In all cases in which probation is granted, the  
28 court shall require as a condition thereof that the person  
29 be confined in ~~the a~~ county jail for at least 45 days. In no  
30 event does the court have the power to absolve a person  
31 who violates this subdivision from the obligation of  
32 spending at least 45 days in confinement in ~~the a~~ county  
33 jail.

34 In any accusatory pleading charging a violation of  
35 subdivision (b), if the defendant has been previously  
36 convicted two or more times of a violation of that  
37 subdivision, each such previous conviction shall be  
38 charged in the accusatory pleading. If two or more of  
39 these previous convictions are found to be true by the  
40 jury, upon a jury trial, or by the court, upon a court trial,

1 or are admitted by the defendant, the defendant shall be  
2 imprisoned in ~~the~~ a county jail for a period of not less than  
3 90 days and shall not be eligible for release upon  
4 completion of sentence, on probation, on parole, on work  
5 furlough or work release, or on any other basis until he or  
6 she has served a period of not less than 90 days in ~~the~~ a  
7 county jail. In all cases in which probation is granted, the  
8 court shall require as a condition thereof that the person  
9 be confined in ~~the~~ a county jail for at least 90 days. In no  
10 event does the court have the power to absolve a person  
11 who violates this subdivision from the obligation of  
12 spending at least 90 days in confinement in ~~the~~ a county  
13 jail.

14 *In addition to any punishment prescribed by this*  
15 *section, a court may suspend, for not more than 30 days,*  
16 *the privilege of the person to operate a motor vehicle*  
17 *pursuant to Section 13201.5 of the Vehicle Code for any*  
18 *violation of subdivision (b) that was committed within*  
19 *1,000 feet of a private residence and with the use of a*  
20 *vehicle.*

21 SEC. 3. Section 13201.5 is added to the Vehicle Code,  
22 to read:

23 13201.5. A court may suspend, for not more than 30  
24 days, the privilege of any person to operate a motor  
25 vehicle upon conviction of paragraph (2) of subdivision  
26 (a) of Section 647 of the Penal Code where the violation  
27 was committed within 1,000 feet of a private residence  
28 and with the use of a vehicle.

29 ~~SEC. 15.~~

30 SEC. 4. Section 22659.5 of the Vehicle Code is  
31 amended to read:

32 22659.5. (a) Notwithstanding any other provision of  
33 law, the County of Alameda, any city in that county, the  
34 County of Contra Costa, any city in that county, the  
35 County of Kern, any city in that county, the County of San  
36 Diego, any city in that county, the County of Sacramento,  
37 any city in that county, the City and County of San  
38 Francisco, the City of Signal Hill, the City of Long Beach,  
39 and the City of Los Angeles with respect to that portion  
40 of that city situated in the San Fernando Valley statistical

1 area, as described in subdivision (c) of Section 11093 of  
2 the Government Code, may adopt an ordinance  
3 establishing a five-year pilot program which implements  
4 procedures for declaring any motor vehicle a public  
5 nuisance when the vehicle is used in the commission of an  
6 act in violation of Section 266h or 266i of the Penal Code  
7 or paragraph (2) of subdivision (a) of Section 647 of that  
8 code, and there is a conviction of Section 266h or 266i of  
9 the Penal Code or paragraph (2) of subdivision (a) of  
10 Section 647 of that code, or a provision involving any  
11 lesser included offense to which the defendant enters a  
12 plea of guilty or nolo contendere as part of a plea  
13 agreement subsequent to the defendant having been  
14 charged with a violation of Section 266h or 266i of the  
15 Penal Code or paragraph (2) of subdivision (a) of Section  
16 647 of that code.

17 (b) In addition to the authority provided by  
18 subdivision (h) of Section 22651, the ordinance may also  
19 include procedures to enjoin and abate the declared  
20 nuisance by ordering the defendant not to use the vehicle  
21 again for purposes of violating Section 266h or 266i of the  
22 Penal Code or paragraph (2) of subdivision (a) of Section  
23 647 of that code and authorizing the temporary  
24 impoundment of the vehicle that the court has declared  
25 a nuisance if the defendant violates the order. The  
26 impoundment shall not exceed 48 hours.

27 (c) The only action that may be taken to enjoin and  
28 abate the declared nuisance are those actions specified in  
29 subdivision (b).

30 (d) Any procedures implemented pursuant to this  
31 section shall ensure that no vehicle shall be declared a  
32 nuisance if the vehicle is stolen, unless it is not possible to  
33 reasonably ascertain the identity of any owner of the  
34 vehicle.

35 (e) This section shall remain in effect only until  
36 January 1, 1999, and as of that date is repealed, unless a  
37 later enacted statute, which is enacted before January 1,  
38 1999, deletes or extends that date.

39 ~~SEC. 16.~~

1     *SEC. 5.* No reimbursement is required by this act  
2 pursuant to Section 6 of Article XIII B of the California  
3 Constitution because the only costs that may be incurred  
4 by a local agency or school district will be incurred  
5 because this act creates a new crime or infraction,  
6 eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section  
8 17556 of the Government Code, or changes the definition  
9 of a crime within the meaning of Section 6 of Article  
10 XIII B of the California Constitution.

11     Notwithstanding Section 17580 of the Government  
12 Code, unless otherwise specified, the provisions of this act  
13 shall become operative on the same date that the act  
14 takes effect pursuant to the California Constitution.

